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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/057,266

01/24/2002

Eric P. Rose

INEI 0306 PUSP

2759

7590

10/22/2004

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EXAMINER

NGUYEN, JIMMY H

ART UNIT

PAPER NUMBER

2673

DATE MAILED: 10/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

10/057,266

Applicant(s)

ROSE ET AL.

Examiner

Jimmy H. Nguyen

Art Unit

2673

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 02 September 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____


Claim(s) objected to: _____

Claim(s) rejected: 1,3-5,8,9,13,16-21,24,28-30,33,34,37,40 and 43-48.

Claim(s) withdrawn from consideration: _____

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____

Continuation of 5. does NOT place the application in condition for allowance because: of the same reasons set forth in the final office action dated 6/28/2004. Applicants' argument with respect to independent claim 1, see page 10, lines 1-20, has been fully considered, but it is not found persuasive, because as discussed in the final office action, Lopretti discloses a tapping on a virtual "Game" button 162 (or icon 162) corresponding to the claimed game gesture and a tapping on a "TV" or "VCR" virtual button (or icon 154) corresponding to the claimed home entertainment device gesture. Furthermore, as noting at col. 2, lines 1-19, Lopresti further teaches that the gestures include handwritten words, symbols, pictures and etc.. Moreover, the pending application provides that a gesture may include a tapping on the touch pad (see fig. 2, "STOP" function and page 7, line 12), and a gesture in one region results in a different action than the same gesture in another region (see page 3, lines 10-12). For the above reasons, examiner believes the claimed "game" and "home entertainment device control" gestures read in the Lopresti reference. Regarding to Applicants' argument with respect to independent claims 28 and 29, see pages 10-12 of the amendment filed on 9/2/04, have been fully considered, but they are not found persuasive. See the response above and the Response to Arguments in the final office action. With respect to the claim objection to claim 1, this objection will be withdrawn.



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